dent's judgment be set aside. The Plaintiff's claim is dismissed. Costs to the Appellant in this court and in the Sessions Court.

Appeal allowed.

Solicitors: *Kassim Tadin, Wai & Co.; Tan Jin Chor & Co.*

LEE BOON TATT & ORS. v. TAKHDIR TRADING SDN. BHD.

[O.C.J. (Mohamed Dzaiddin J.) April 3 & July 5, 1984]

[Penang – Civil Suit No. 509 of 1983]

Practice & Procedure – Writ of Summons – Whether Writ had been properly served – R.H.C. 1980, O.62 r.4(1)(b).

This application arose from the plaintiffs' action against the defendants for recovery of vacant possession of premises No. 39, Chulia Street, Penang. The Writ of Summons was served by the plaintiffs on the defendants on August 24, 1983 by pre-paid registered post addressed to the defendants at No. 103, Bangunan Malayan Banking, First Floor, Jalan Union, Penang and at premises No. 39, Chulia Street, Penang which the plaintiffs had claimed to be the registered and business offices respectively of the defendants. The A.R. Registered retour cards were endorsed and acknowledged by the defendants on August 29, 1983.

The defendants applied to strike out the plaintiffs' action on the ground that the Writ of Summons was never served on them at the registered office. They maintained that at all material times the registered address for service (being the registered office) of the defendants under the Companies Act 1965 was at No. 31 China Street Ghaut, Penang.

Held, dismissing the defendants' application: (1) it was not the legislative intention to limit service only at the registered office. The rule (O.62 r.4(1)(b)) says if there be more offices than one, then service may be effected at the principal office which should mean the principal place of business of the corporation;

(2) on the facts of this case, the principal place of business of the defendants at the material time was No. 39, Chulia Street, Penang and the service of the Writ by A.R. Registered post was good and effective service. The defendants in this case had become aware of the service of the said Writ.

Cases referred to:

(1) *Wood* v. *Anderston Foundary Co.* 36 W.R. 918.
(2) *Pelajaran Nasional Indonesia* v. *Joo Seang & Co. Ltd.* [1958] M.L.J. 113.
(3) *Addis Ltd.* v. *Berkeley Supplies Ltd.* [1964] 1 W.L.R. 943.

CIVIL SUIT.

Yu Meng Queng for the plaintiffs.
Balwant Singh for the defendants.

Cur. Adv. Vult.

Mohamed Dzaiddin J.: This application arose from the plaintiffs' action against the defendants for recovery of vacant possession of premises No. 39, Chulia Street, Penang based on a tenancy agreement entered into between the plaintiffs and Syarikat Asian Enterprises as the tenant on December 29, 1975.

The Writ of Summons in this action was served by the plaintiffs on the defendants on August 24, 1983 by pre-paid registered post addressed to the defendants at No. 103, Bangunan Malayan Banking, First Floor, Jalan Union, Penang and at premises No. 39, Chulia Street, Penang which the plaintiffs had claimed to be the registered and business offices respectively of the defendants. The A.R. Registered retour cards were endorsed and acknowledged by the defendants on August 29, 1983.

The defendants had applied to strike out the plaintiffs' action on the ground that the Writ of Summons was never served on them at the registered office. They maintained that at all material times the registered address for service (being the registered office) of the defendants under the Companies Act 1965 was at No. 31, China Street Ghaut, Penang. (See the affidavit of Encik M.S.A. Zachariah affirmed on September 16, 1983). This was confirmed by a letter from the Assistant Registrar of Companies, Penang Branch dated October 14, 1983. (See exhibit "MSA 1" to the affidavit of Encik Zachariah affirmed on October 31, 1983).

Clearly, the provisions for service of documents on corporations are governed by O.62, r.4(1) of the Rules of the High Court, 1980.

Order 62 rule 4(1) reads as follows:

"4.(1) Where an action is against a corporation, the writ may be served –

(a) by leaving a copy of it at the registered office (if any) of the corporation; or

(b) by sending a copy of it by registered post addressed to the corporation at the office, or, if there be more offices than one at the principal office of the corporation, whether such office be situated within Malaysia or elsewhere; or

(c) by handing a copy of it to the secretary or to any director or other principal officer of the corporation;

(d) in the case of a foreign company registered under Part XI of the Companies Act 1965 by handing a copy of it to, or sending the same by registered post to, a person authorised to accept service of process on behalf of the foreign company."

This rule enabled service of a document to be effected on the corporation in the same manner as was authorized by the former 1957 Rules of the High Court O.9, r.8(1). The old rule 8 had an asterisk after the figure 8, which indicated that it differed from the English rule. In England, the relevant rule as to service of documents was under O.65, r.3 of the Supreme Court Practice, 1979. The 1979 *White Book* at p.1095 under "Companies", had this to say:

"Every company having a registered office may be served with any document by leaving it at or sending it by post to the registered office of the company (Companies Act, 1948, section 437). Service at any office of the company other than the registered office is bad. (*Wood* v. *Anderson Foundry Co.*[1])."

Mr. Balwant Singh, counsel for the defendants had submitted that the plaintiffs had not complied with Order 62 rule 4(1)(a) of the Rules and section 350 of the Companies Act, 1965 because the registered office had remained at No. 31, China Street Ghaut, Penang and not at No. 103, First Floor, Jalan Union, Penang as contended by the plaintiffs. Section 350 of the Companies Act says a document may be served on a company by leaving it at or sending it by registered post to the registered office of the company. And under section 4 of the same Act a "document" includes summons, order and other legal process.

Counsel relied, as his authority, on the decision of Rigby J., in *Pelajaran Nasional Indonesia* v. *Joo Seang & Co. Ltd.*[2] In that case, it was held that where the law provides a particular matter or form of procedure for effecting service or a particular place at which, or to which, service may be effected, then there must be strict compliance with those provisions, and the court would set aside a judgment obtained by default where the requirements have not been complied with. It is interesting to observe that in coming to his decision, Rigby J. was referred to a number of English cases. Among the cases referred to, I found that only the case of *Wood* v. *Anderson Foundry Co., supra,* appeared to be directly relevant. In that case, the company had their registered office in Scotland but carried on branch works in England. The writ was served on the manager of the branch works and a copy had also been sent by post to the registered office. The court held that service at any office of the company other than the registered office was bad and must be set aside. (See also: *Addis Ltd.* v. *Berkeley Supplies Ltd.*[3]).

In determining whether or not in the present case the Writ had been properly served on the defendants, the court has to consider the effect of rule 4(1)(b). *Mallal's* Supreme Court Practice (2nd Edition) under para 62/4/2 at p.849 says that sub-rule 1(a) and (b) repeat section 350 Companies Act. I agree to a certain extent, perhaps, in so far as service at the registered office. In my opinion, it was not the legislative intention to limit service only at the registered office. The rule says if there be more offices than one, then service may be effected at the principal office which should mean the principal place of business of the corporation.

From the affidavits affirmed on behalf of the plaintiffs it was established that a copy of the Writ of Summons had been served on the defendants at No. 39, Chulia Street, Pulau Pinang, which the plaintiffs had claimed to be the business office of the defendants. The plaintiffs relied on an advertisement by the defendants in the local newspapers for sale of houses. (See exhibit "TKT 1" in the affidavit of the third plaintiff affirmed on October 13, 1983). In this exhibit, the address given was No. 39, First Floor, Chulia Street, Pulau Pinang. This advertisement was placed in the newspapers as a requirement under the Housing Developers (Control and Licensing) Act and Rules. Therefore, on the facts of this case, I held that the principal place of business of the defendants at the material time was No. 39, Chulia Street, Penang and the service of the Writ by A.R. Registered post was good and effective service. After all, the object of all services was to give notice to the party on whom it was made so that he might be aware of and able to resist that which was sought against him. The defendants, in this case, had become aware of the service of the said Writ. In the circumstances, I dismissed the defendants' application to strike out the plaintiffs' claim. The defendants were given time to file their defence within twenty-one (21) days from the date of this Order.

Application dismissed

Solicitors: *Tan, Yu & Co.; Balwant Singh & Co.*